

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY PANAMA

C O N F I D E N T I A L STATE 006124

E.O. 11652: GDS

TAGS: EPRS, PN

SUBJECT: BOSTON-PANAMA CASE

1. WHILE RECENT ROUND OF GSP COUNTRY LIST DETERMINATIONS DID NOT FOCUS SPECIFICALLY ON BOSTON-PANAMA CASE IN PANAMA, THE MATTER WAS DISCUSSED AGAIN INFORMALLY AMONG INTERESTED AGENCIES AT WORKING LEVEL. (SECTION 502(B)(4) OF THE TRADE ACT OF 1974 CONTAINS PROVISIONS SIMILAR TO HICKENLOOPER AND GONZALEZ AMENDMENTS REQUIRING DENIAL OF GSP TO COUNTRIES THAT EXPROPRIATE U.S.-OWNED PROPERTY AND ARE NOT ENGAGED IN GOOD FAITH NEGOTIATIONS TOWARD THE PROVISION OF PROMPT, ADEQUATE, AND EFFECTIVE COMPENSATION OR ARE NOT OTHERWISE TAKING STEPS TO DISCHARGE THEIR OBLIGATIONS UNDER INTER-CONFIDENTIAL

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NATIONAL LAW.) AS EMBASSY AWARE, DEPT HAS NEVER MADE

FORMAL DETERMINATION THAT EVENTS OF BOSTON-PANAMA CASE CONSTITUTE EXPROPRIATORY ACTION WITHIN MEANING OF THE STATUTES. WE HAVE FELT, HOWEVER, AND CONTINUE TO FEEL, THAT BOSTON-PANAMA INTERESTS HAVE A LEGITIMATE PROBLEM WHICH THE GOP WILL HAVE TO RESOLVE IF DIFFICULTIES UNDER THESE STATUTES AND GENERAL U.S. GOVERNMENT POLICIES AFFECTING INVESTMENT ARE TO BE AVOIDED. THE PANAMANIAN EMBASSY HERE HAS REPEATEDLY ASSURED US OF THEIR WILLINGNESS TO DISCUSS THE CASE WITH BOSTON-PANAMA REPRESENTATIVES, WITH A VIEW TOWARDS FINDING A MEANS OF RESOLVING THE ISSUE AND, IN FACT, THERE HAS BEEN AT LEAST ONE MEETING ON THE SUBJECT.

2. RECENTLY, HOWEVER, BOSTON-PANAMA'S LEGAL REPRESENTATIVE (JACK HELLER) HAS INFORMED US THAT AMBASSADOR GONZALEZ-REVILLA WAS APPARENTLY AVOIDING MEETING WITH HIM. A DEPARTMENT OFFICER DISCUSSED THE MATTER WITH GONZALEZ-REVILLA PRIOR TO THE CHRISTMAS HOLIDAYS AND OBTAINED RENEWED ASSURANCES THAT THE GOP WAS WILLING TO CONSIDER ANY PROPOSALS THE COMPANY MIGHT PUT FORWARD (PROVIDED HE COMPANY DID NOT ENGAGE IN PRESSURE TACTICS SUCH AS THREATENING TO RAISE THE MATTER WITH THE CONGRESS). AT THAT TIME HE AGREED TO MEET HELLER EARLY THIS MONTH. ON JANUARY 7, HOWEVER, HELLER ADVISED DEPT THAT GONZALEZ-REVILLA HAD NOT RETURNED HIS NUMEROUS CALLS. DEPT OFFICER AGAIN CONTACTED GONZALEZ-REVILLA WHO ASSURED US THAT DELAY WAS DUE SOLELY TO PRESS OF OTHER BUSINESS. AT DEPT OFFICER'S SUGGESTION, HE AGREED TO DESIGNATE EMBASSY LEGAL COUNSEL (SR. BILONICK) TO HANDLE MATTER WITH COMPANY, AND ASSURED US BILONICK WOULD BE IN POSITION TO DISCUSS MATTER "MEANINGFULLY." HELLER WAS SATISFIED WITH THIS ARRANGEMENT AND HOPES TO BEGIN DISCUSSIONS THIS WEEK.

3. GIVEN LACK OF SUBSTANTIVE PROGRESS TO DATE, DEPT WISHES TO MAKE GOP DIRECTLY AWARE OF OUR INTEREST IN AVOIDING POTENTIAL PROBLEMS THIS CASE POSES FOR BOTH GOVERNMENTS. AMBASSADOR GONZALEZ-REVILLA SUGGESTED THAT WITHIN GOP IT WOULD BE BEST TO RAISE THE MATTER WITH PLANNING MINISTER BARLETTA, WHO IS GENERALLY AWARE OF THE PROBLEM, AND WHO HAS A PERSONAL RELATIONSHIP WITH CONFIDENTIAL

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HELLER.

4. ACCORDINGLY, DEPT. REQUESTS THAT EMBASSY RAISE MATTER WITH BARLETTA ALONG FOLLOWING LINES:

(A) WE UNDERSTAND THAT MINISTER BARLETTA IS GENERALLY AWARE OF THE LONG AND COMPLICATED HISTORY OF THE BOSTON-PANAMA CASE. THE USG WISHES TO AVOID ANY POSSIBILITY

THAT WHAT SHOULD BE A MINOR MATTER MIGHT DEVELOP INTO AN ISSUE WHICH COULD PRESENT SIGNIFICANT DIFFICULTIES FOR BOTH COUNTRIES.

(B) AS THE GOP IS AWARE, U.S. LEGISLATION CONTAINS A VARIETY OF PROVISIONS APPLICABLE TO COUNTRIES WHICH HAVE

EXPROPRIATED OR TAKEN SIMILAR ACTIONS AGAINST THE PROPERTY OF US CITIZENS WITHOUT THE PAYMENT OF JUST COMPENSATION. WHILE THE USG HAS NOT TAKEN ANY POSITION ON THE MERITS OF THE BOSTON-PANAMA CASE, SERIOUS QUESTIONS HAVE BEEN RAISED WITH RESPECT TO THE APPLICABILITY OF US STATUTES, PARTICULARLY IN CONNECTION WITH SECTION 5 OF THE TRADE ACT OF 1974. MOREOVER, AT A TIME WHEN WE ARE ATTEMPTING TO DEMONSTRATE THAT BOTH COUNTRIES CAN WORK CONSTRUCTIVELY TOGETHER UNDER A NEW TREATY, ANY ALLEGATIONS THAT PANAMA HAS FAILED TO LIVE UP TO ITS INTERNATIONAL OBLIGATIONS WITH RESPECT TO US INVESTORS WOULD BE UNHELPFUL -- IRRESPECTIVE OF WHETHER THOSE ALLEGATIONS WERE JUSTIFIED.

(C) IN GENERAL, WE BELIEVE THAT THE BEST MEANS OF RESOLVING DISPUTES OF THIS NATURE IS THROUGH DIRECT NEGOTIATIONS BETWEEN THE PARTIES CONCERNED. WE HAVE, THEREFORE, BEEN PLEASED THAT THE PANAMANIAN EMBASSY IN WASHINGTON IS WILLING TO CARRY ON MEANINGFUL DISCUSSIONS WITH THE BOSTON-PANAMA REPRESENTATIVES, AND ARE HOPEFUL THAT THESE DISCUSSIONS WILL LEAD TO A MUTUALLY ACCEPTABLE SOLUTION.

(D) WE HAVE BROUGHT THIS MATTER TO MINISTER BARLETTA'S ATTENTION IN ORDER TO MAKE HIM AWARE OF OUR INTEREST IN ENSURING THAT A SITUATION WHICH SEEMS SUBJECT TO A SATIS-
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FACTORY RESOLUTION NOT BE PERMITTED TO DEVELOP INTO A SERIOUS PROBLEM FOR BOTH COUNTRIES DURING THIS DELICATE PERIOD IN OUR COMMON EFFORTS TO ACHIEVE A NEW TREATY. KISSINGER

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